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Sprint

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March 17, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of The Merger of MCI Communications Corporation and British Telecommunications plc
GN Docket No. 96-245

Dear Mr. Caton:

Pursuant to the Commission's Public Notice (DA 96-2079) released December 10, 1996, Sprint Corporation ("Sprint") hereby respectfully submits a 3.5 inch diskette containing its reply comments in the above-referenced proceeding. If you have any questions, please contact the undersigned at 202-828-7438.

Sincerely,

Michael B. Fingerhut

Attachment

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Merger of MCI Communications Corporation and British Telecommunications plc	)	GN Docket No. 96-245

REPLY COMMENTS OF SPRINT CORPORATION

Pursuant to the Commission's Public Notice (DA 96-2079) released December 10, 1996, Sprint Corporation ("Sprint") respectfully submits its reply to the "Opposition & Reply" filed by British Telecommunications plc ("BT") and MCI Corporation ("MCI"), collectively Applicants or BT/MCI, in the above-captioned proceeding.

There can be no question that BT exercises substantial market power in the U.K. telecommunications market. BT's U.K. "network is the most comprehensive, with an unparalleled degree of coverage.[1] In fact, BT is the "only ubiquitous provider of local exchange services," WorldCom Comments at 6; BT operates the most fully developed long distance network in the U.K., MCI Comments filed September 6, 1996 in *BT North America Inc., Motion to be Reclassified as a Non-Dominant Carrier for US-UK Service,*

[1] ***Motion of AT&T to be Declared Non-Dominant for International Services***, FCC 96-209, (released May 14, 1996) (***"AT&T Nondominance Order"***) at ¶90 citing a Report issued by Oftel in February 1996 entitled "Promoting Competition in Services over Telecommunications Networks" at 3.4.

File No. ISP-96-007-ND at 1-2; and, "BT maintains control over bottleneck access to submarine cable facilities," WorldCom Comments at 6. All U.S. carriers, therefore, must depend upon BT to terminate calls from the U.S. to the U.K. and this dependence, in turn, enables BT to wield substantial market power. *See BT North America, Inc.*, 10 FCC Rcd. 3204, 3205 ¶7 (1995); *see* also Energis Comments at 1 (although "the process of deregulation of the [U.K.] telecommunications industry began back in 1984 ... BT is still the dominant player").

There also can be no doubt that if permitted to acquire MCI in its entirety, BT will have an incentive to exploit its market power to enhance the competitive position of MCI in the U.S. market by engaging in unlawful discrimination against MCI's U.S. rivals. Both the Commission and the Department of Justice ("Department") found that the danger of such discrimination existed when BT acquired a non-controlling 20 percent interest in MCI. *MCI Communications Inc./British Telecommunications, plc.*, 9 FCC Rcd 3960 (1994) ("*MCI/BT Order*"). BT's complete ownership of MCI obviously increases the danger many fold since BT will be able to realize the full benefit of the anticompetitive discrimination. Sprint Comments at 5-6 and AT&T's Comments at 9-12. Accordingly, if the Commission is to allow BT to acquire MCI, it must seek to reduce the risk that a dominant BT will seek to harm competition in the U.S. market by imposing regulatory safeguards that expand upon those previously adopted by the

Commission and the Department in connection with BT's 20 percent acquisition of MCI. Sprint and other commenters have recommended a number of conditions which they believe, at a minimum, are necessary to help constrain BT's exploitation of its market power to the detriment of U.S. competition.

BT/MCI do not contend that the U.K. market is effectively competitive. Nor do they challenge the fact that BT is dominant in such market. Nonetheless, they take strong exception to the position of Sprint and others that, if the Commission approves BT's acquisition of MCI, it will need to impose regulatory safeguards designed to reduce the danger that BT will exploit its market power to favor MCI at the expense of MCI's U.S. competitors.[2] According to BT/MCI, the imposition of any conditions is beyond the Commission's jurisdiction; would improperly substitute the Commission's regulatory judgment for that of Oftel; and is unnecessary in light of what BT/MCI claim to be Oftel's effective regulation.[3]

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[2]The Applicants also argue that the conditions which the Commission adopted when it approved BT's 20 percent acquisition of MCI should be abolished. BT/MCI Reply and Opposition at 15, n. 34. They claim that these conditions are no longer necessary because the U.K. provides effective competitive opportunities to U.S. carriers. The notion that U.S. carriers are now able to compete effectively in the U.K. market is totally without merit for the reasons already set forth in Sprint's Comments (at 11-18).

[3]*See* BT/MCI Reply at 3 ("[t]he FCC should reject calls ... to impose merger conditions that would rewrite the ground rules for competition and interconnection in the UK" and "respect the judgment" of Oftel); at 12-13 ("[t]he Commission should resist the invitation to extend its reach into UK affairs and should refuse to adopt merger conditions that would substitute the FCC's judgment for Oftel's on matters that are unquestionably with the authority and competence of the UK regulator"); at 15 (given Oftel's "commitment to full and fair competition, ... there is no reason for the FCC

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BT's and MCI's sensitivity here to the jurisdictional reach of the Commission and to the possibility that the Commission might offend the U.K. regulator by imposing conditions on the proposed merger, while perhaps not unexpected, is certainly at odds with their insistence that the Commission must inject itself into the regulatory affairs of other foreign governments by second-guessing their regulatory decisions or policies. In fact, BT and MCI have argued that the Commission has a duty to ensure that the home markets of other dominant foreign carriers that are seeking to enter the U.S. market are effectively competitive before it allows such carriers to invest in or enter the U.S. telecommunications market. This duty, according to BT and MCI, requires that the Commission review the regulatory decisions of a foreign government and then tell the foreign government what changes must be made to promote the development of effective competition. *See* Sprint Comments at 15-16.

BT/MCI's position here is also at odds with their demand that the Commission continue the "facilities freeze" for Sprint until Deutsche Telekom ("DT") and France Télécom's ("FT") and their respective regulators meet certain conditions. In fact, just two weeks after filing their Reply here and insisting that

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to impose special conditions of its own concerning regulatory matters competently addressed by and with the province of UK regulators"); at 24-25 (Oftel regulation would prohibit BT from discriminating in favor of MCI and the Commission "should not extend it authority to cover UK jurisdictional matters that Oftel has well in hand"); and at 26 ("...the FCC should not attach conditions to the merger that duplicate Oftel's effective regulation").

the Commission must "respect" the regulatory judgment and competence of Oftel, both MCI and BT filed pleadings on Sprint's Application to operate additional facilities in the U.S. - Germany market in which they argue that the Commission must examine every detail of German regulatory law and policy; that the Commission ensure that there are no *de facto* barriers to alternative infrastructure competition in Germany; and, that the Commission must investigate the tariffs of DT to determine whether such tariffs guarantee the economic viability and profitability of resellers in the German market. *See* Comments of BT North America and Opposition of MCI filed March 7, 1997 in *Sprint Corporation, Application to Operate Additional Facilities on the U.S.-Germany Route Pursuant to Section 214 of the Communications Act of 1934, as amended.*

BT and MCI cannot have it both ways. If, as they argue here, the imposition of regulatory safeguards by the Commission on BT's acquisition of MCI and entry into the U.S. telecommunications market would constitute an improper extension of the Commission's jurisdiction and an unwarranted intrusion into the regulatory affairs of Oftel, the imposition of any safeguards on the entry or investment by any dominant foreign carrier in the U.S. market would be similarly suspect. In particular, it makes no sense to argue that government regulation of foreign competition is unnecessary or an intrusion when a foreign carrier acquires 100 percent of the second largest

interexchange carrier in the U.S., but that such regulation is necessary and that intrusion is not a problem when a foreign carrier acquires a non-controlling 10 percent interest in a U.S. carrier.

BT/MCI suggest that there is no need to impose regulatory safeguards on their transaction because of "Oftel's commitment and authority to ensure a truly competitive UK telecommunications market." BT/MCI Reply at 26. But, it would seem self-evident that the Commission cannot place itself in the position of judging the sincerity of the various programs to liberalize telecommunications by different foreign administrations. This would be violative of the WTO agreement, and, equally important, it would be totally inconsistent with any reasonable approach to comity. Plainly, BT/MCI's reliance on "Oftel's commitment" to differentiate the U.K. market and to argue that regulatory safeguards are not necessary is misplaced. For the most part, the regulators of the larger telecommunications markets in highly developed countries have made similar or identical commitments.[4]

With the exception of Sprint's suggestion that the Commission require that MCI remain a separate entity from all other subsidiaries of its U.K. parent, BT/MCI do not specifically

[4]In any case, Oftel's commitment to the even-handed and indifferent promotion of all competitors and competitive strategies may not be as absolute as BT/MCI appear to suggest. *See* Prepared Speech of Chairman Reed Hundt before the National Association of Regulatory Utility Commissioners Communications Committee delivered February 25, 1997 at 3.

mention any of Sprint recommended safeguards, let alone demonstrate why the regulatory safeguards that Sprint has recommended are outside the Commission's jurisdiction and how the imposition of such safeguards would interfere with Oftel's regulation of the U.K. market. Unlike the role BT and MCI would have the Commission assume with respect to the development of competition in the French and German markets, none of the safeguards suggested by Sprint would establish the Commission as a super-regulator of the U.K. market. Rather, as explained in its initial Comments, Sprint's suggested safeguards are designed to ensure the transparency of all transactions between BT and MCI so that the Commission will be a position to detect possible anticompetitive and discriminatory behavior by BT in favor of MCI in the U.S. market and thereby act to protect U.S. competition.[5]

As for Sprint's safeguard that MCI be required to remain a separate entity, BT/MCI's objection appears to be based upon the notion that such requirement is "burdensome and unnecessary" and not that it somehow would usurp Oftel's jurisdiction. BT/MCI Reply at 23. They argue that under the terms of the Application MCI "will be a subsidiary of the new Concert separate from BT." But if that is the case, a specific regulatory condition that

[5]Certain of Sprint's suggested safeguards have been adopted -- often with the support of MCI -- by the Commission in other proceedings involving foreign carrier investment or entry into the U.S. market. *See e.g.*, MCI's Petition to Deny filed March 14, 1996 in *Telecom New Zealand International Limited* (I-T-C-96-097) at 12-13 (arguing that should the Commission grant the application of

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would ensure such separation should not impose any special burdens upon BT or MCI.

BT/MCI also argue that Oftel should be trusted to ensure that BT not discriminate in favor of MCI and the "Commission should not extend its authority to cover UK jurisdictional matters that Oftel has well in hand." *Id.* at 24-25. However, U.S. carriers should not be required to rely upon Oftel to address matters which concern competition in the U.S. market. Just as the Commission's jurisdiction and expertise do not extend to issues arising in the U.K. or in any foreign market, Oftel's jurisdiction and expertise do not extend to issues arising in the U.S. market. It is the duty of the Commission under the Communications Act to guard against the danger that a dominant foreign carrier entrant in the U.S. market would engage in anticompetitive behavior in the U.S. market. It would be irresponsible and certainly an abrogation of the Commission's statutory mandate for the Commission to delegate such duty to the regulatory entity of the entrant's home country.

Finally, in its Comments (at 10-11), Sprint explained that the all important TAT-12/13 cable system is close to being fully subscribed in large part due the recent purchase MCI of significant capacity and that the Commission may need to ensure that BT not exploit its market power with respect to such cable

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Telecom New Zealand International Limited (TNZI) to enter the U.S. international market, it should regulate TNZI as a dominant carrier).

system in the allocation of the remaining capacity. BT/MCI claim, however, that Sprint has substantial amounts of capacity on the cable because of its Global One joint venture with FT and DT. According to BT/MCI, Sprint together with FT and DT had 200 whole minimum investment units (MIUs) in the TAT-12/13 cable system as of January 31, 1997. But, Sprint has only 71 whole circuits in the TAT-12/13 cable and all of Sprint's circuits are either currently being utilized or will be utilized shortly. Of equal significance, Sprint does not have a claim on or access to the whole circuits owned by DT (92) and FT (37) in the TAT-12/13 cable system. On the contrary, both DT and FT are presumably using the circuits for their own communications needs. To imply, as BT/MCI do, that Sprint has sufficient capacity on the TAT-12/13 to provide U.S. to U.K. traffic in competition with the BT/MCI conglomerate because of the whole circuits owned separately by DT and FT is illogical. DT and FT each own only 10

percent of Sprint. If capacity in the TAT-12/13 is a problem - and it is - it would make no economic sense for DT and FT to turn over their circuits to Sprint.

Respectfully submitted,

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March 17, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 17th day of March, 1997 to the parties on the attached list:

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March 17, 1997

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